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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/204,013

12/01/1998

WAYNE D. BALDWIN

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06/17/2004

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EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT

PAPER NUMBER

3742

DATE MAILED: 06/17/2004

27

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/204,013

Applicant(s)

BALDWIN ET AL.

Examiner

Joseph M Pelham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-57 and 59 is/are rejected.
- 7) ☒ Claim(s) 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The Examiner acknowledges Applicants' submission of the RCE and amendment filed 19 May 2003. Claims 37-59 are now pending.

Claim Rejections - 35 USC § 103

Claims 37-57 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5454471 to Norvell in view of U.S. Patent 5750962 to Hyatt and either U.S. Patent 4816646 to Solomon et al or 4806736 to Schirico.

Norvell discloses, at Figures 1-5 (***see especially Fig. 1***), column 4, lines 6-18, col. 5, line 52, through col. 6, line 6, col. 6. lines 46-61, and column 7, line 21, through column 8, line 7, a method for transporting cooked pizzas substantially as claimed, in which boxed pizzas are transported, including a pliable fabric container 10 having a second interior chamber 24 to receive a phase change heat retention member and which is separable, by means of a two-position cover 84, from a first chamber for holding pizza, a selectively movable flap 18 connected to the bottom of the container 10, and a thermal insulating layer 14 (foam) beneath the second interior chamber 24 so that heat from the heat retention member is directed primarily from the second interior chamber to the first interior chamber.

Norvell discloses the electric heating of the heat retention member by battery, but does not disclose a heating coil in thermal contact with the surface of a sealed heat retention member, a thermostat which opens at 95° - 105°C, a handle, a water heat retention member, or applying AC power to the heat retention member while it is in the second chamber, prior to or after inserting a pizza.

Referring to Figures 1-8, and column 3, lines 21-60, Hyatt discloses a heating coil 24, 26 in thermal contact with a sealed heat retention member 18, a thermostat 30, and AC or DC power for the heating coil. It would have been obvious to one of ordinary skill in the art to adapt the coil, thermostat, and power means of Hyatt to the device of Norvell to obviate the need for a microwave oven in which to heat the heat retention member prior to use in a pizza carrier, allowing more efficient use of the carrier.

Figures 1-4 and column 3 line 68, through column 4, line 3, of Schirico, who also discloses a handle, or Figure 4 and column 3, lines 1-12, of Solomon et al, for whom a handle would be an obvious adjunct, discloses applying AC power to a heat retention member within a pizza carrier, prior to inserting a pizza. It would have been obvious to one of ordinary skill in the art to heat the heat retention member of Norvell in view of Hyatt within a pizza carrier, after the manner of either Solomon et al or Schirico, so that the carrier would be immediately ready for use upon heating the heat retention member; and handle would have been obvious to more easily grasp the carrier. Alternatively, it would have been obvious to charge the heat retention member after a pizza is inserted at such times as the customer demand is sufficiently high to preclude charging beforehand.

Allowable Subject Matter

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Claim 58 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 5/19/03 have been fully considered but they are not persuasive.

At pages 10-11 of the Amendment, Applicant argues against Norvell, Hyatt, Solomon and Schirico individually; however, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

At page 11, first full paragraph, Applicant argues that Norvell does not disclose a pliable fabric structure. Referring, however, to col. 5, line 52, through col. 6, line 61, Norvell discloses interior and exterior ***fabric*** construction, with open cell foam insulation, which necessarily forms a pliable fabric structure.

The Examiner notes as well that Applicants' averred shortcomings of Hyatt, Solomon, and Schirico, being the direction of heat from the second interior volume to the first interior volume, a cover for the second interior volume, is explicitly disclosed by Norvell, as discussed in the rejection above.

Conclusion

This is the first Office action in an RCE. All claims are drawn to the same invention claimed previously and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered earlier in prosecution. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the RCE. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

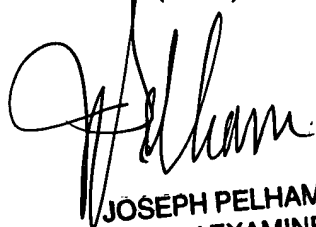
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M Pelham whose telephone number is 703-308-1709. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

6/7/04



JOSEPH PELHAM
PRIMARY EXAMINER